

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719  
5 Plaintiff, -  
6 v. - Toledo, Ohio  
7 - February 24, 2007  
8 - Detention Hearing  
9  
10 MARWAN OTHMAN EL-HINDI, -  
11 et al., -  
12 Defendants. -  
13 -----

14 TRANSCRIPT OF DETENTION HEARING  
15 BEFORE THE HONORABLE JAMES G. CARR  
16 UNITED STATES DISTRICT CHIEF JUDGE

17 APPEARANCES:

18 For the Plaintiffs: United States Attorneys' Office  
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24 Proceedings recorded by mechanical stenography,  
25 transcript produced by notereading.

13:35:16 1 (Commenced at 1:35 p.m.)

13:35:22 2 THE COURT: The case before the Court this  
13:35:26 3 afternoon is United States of America versus Marwan  
13:35:28 4 El-Hindi, case 3:06-CR-719. Present in court this  
13:35:34 5 afternoon is Mr. David Bauer, supervisory assistant  
13:35:40 6 United States attorney; also present is Mr. Tom Getz,  
13:35:44 7 Assistant United States Attorney from Cleveland; and Mr.  
13:35:48 8 Greg Sofer, trial attorney with the Department of  
13:35:50 9 Justice. Also present is the defendant, Marwan Othman  
13:35:56 10 El-Hindi; together with his counsel, Mr. Richard Kerger  
13:36:00 11 and Mr. Steve Hartman.

13:36:02 12 Are the parties ready to proceed?

13:36:04 13 MR. HARTMAN: The defendant is, Your Honor.

13:36:06 14 MR. GETZ: On behalf of the government, we  
13:36:08 15 are ready to proceed, Your Honor.

13:36:10 16 THE COURT: Thank you. This case comes  
13:36:14 17 before the Court for a detention hearing. The  
13:36:16 18 defendant, Mr. El-Hindi, was charged in an indictment  
13:36:18 19 that was filed on February 16, 2006 in Counts 1 and 2 of  
13:36:26 20 a five-count indictment.

13:36:28 21 Count 1 of the indictment charges a  
13:36:30 22 conspiracy to kill, kidnap, maim, or injure persons  
13:36:36 23 outside of the United States in violation of Title 18 of  
13:36:38 24 the United States Code, Section 956(a)(1). The penalty  
13:36:46 25 if convicted would be a term of any years to life in the

13:36:54 1 event of killing or kidnapping. With respect to the  
13:36:56 2 conspiracy to maim, the maximum penalty is up to 35  
13:37:02 3 years. A fine of \$250,000 could be imposed pursuant to  
13:37:06 4 the statute. Following a term of imprisonment, the  
13:37:12 5 defendant would be subject to a period of supervised  
13:37:14 6 release of up to five years.

13:37:16 7 With respect to the second count that Mr.  
13:37:20 8 El-Hindi is charged with, that is a conspiracy to  
13:37:22 9 provide material support to terrorists in violation of  
13:37:26 10 Title 18 of the United States Code, Section 2339A, the  
13:37:32 11 penalty for conviction is up to 15 years imprisonment.  
13:37:38 12 However, if death occurs, any term of years up to life  
13:37:42 13 could be imposed. A fine of up to \$250,000 would also  
13:37:48 14 apply upon conviction.

13:37:50 15 The defendants would also -- the defendant  
13:37:52 16 would also be required to pay a \$100 special assessment  
13:37:56 17 for each count for which he is convicted.

13:38:02 18 At the initial appearance and arraignment  
13:38:04 19 the government provided an estimated sentencing  
13:38:08 20 guideline range of approximately 360 months to life; is  
13:38:14 21 that correct, Mr. Bauer -- Mr. Getz?

13:38:16 22 MR. GETZ: It is, Your Honor.

13:38:18 23 THE COURT: And the Court explains to the  
13:38:20 24 defendant that this guideline range is advisory. It is  
13:38:24 25 not binding upon the District Court. It is one of the

13:38:26 1 factors that the Court would consider if the defendant  
13:38:28 2 is convicted and at the time of sentencing, the Court is  
13:38:32 3 imposing a reasonable sentence.

13:38:36 4 At the end of the arraignment on February  
13:38:42 5 21, 2006, the government moved for detention and  
13:38:46 6 asserted the statutory presumption against release  
13:38:50 7 because the defendant was charged with a violation of  
13:38:54 8 Title 18 of the United States Code, Section 956(a), and  
13:39:00 9 the filing of an indictment constitutes probable cause.  
13:39:06 10 The presumption shifts the burden of production to the  
13:39:10 11 defendant to show that his release would not pose a  
13:39:14 12 danger to the community and there is not a likelihood  
13:39:18 13 that he would flee.

13:39:20 14 Mr. Kerger, are you prepared to go forward  
13:39:22 15 this afternoon?

13:39:24 16 MR. KERGER: Your Honor, at this point we've  
13:39:24 17 not had the opportunity to complete the arrangements as  
13:39:28 18 we think would be necessary to convince the Court the  
13:39:32 19 presumption has been overcome. So at this point we're  
13:39:34 20 willing to consent to his detention with the government  
13:39:36 21 with the reservation of our right to revisit this issue.

13:39:40 22 THE COURT: Thank you. May I inquire of  
13:39:42 23 your client?

13:39:42 24 MR. KERGER: You may, Judge.

13:39:46 25 THE COURT: Mr. El-Hindi, you heard the

13:39:48 1 statement of your lawyer that you are consenting to  
13:39:52 2 detention today because you have not had an opportunity  
13:39:54 3 to present conditions of release. Do you agree with  
13:40:00 4 that statement?

13:40:00 5 THE DEFENDANT: Yes.

13:40:02 6 THE COURT: Have you had adequate time to  
13:40:04 7 talk to your lawyers about consenting to detention?

13:40:06 8 THE DEFENDANT: Yes.

13:40:10 9 THE COURT: Has anyone attempted to force or  
13:40:12 10 coerce you into consenting to detention?

13:40:14 11 THE DEFENDANT: No.

13:40:14 12 THE COURT: Prior to the hearing today over  
13:40:18 13 the past 48 hours have you consumed any substance or  
13:40:22 14 medication that would affect your ability to understand  
13:40:24 15 what's going on here today?

13:40:26 16 THE DEFENDANT: No.

13:40:26 17 THE COURT: Your mind is clear?

13:40:26 18 THE DEFENDANT: Yes.

13:40:28 19 THE COURT: You know why you're here?

13:40:28 20 THE DEFENDANT: Yes.

13:40:30 21 THE COURT: Thank you. Mr. Getz -- or  
13:40:34 22 which lawyer speaks for the government?

13:40:36 23 MR. GETZ: Mr. Getz, Your Honor.

13:40:38 24 THE COURT: Mr. Getz, do you have any  
13:40:40 25 objection to the defendant's position?

13:40:42 1 MR. GETZ: No, Your Honor.

13:40:44 2 THE COURT: Thank you. Based upon the  
13:40:48 3 defendant's consent to detention, the Court will order  
13:40:52 4 that the defendant continue to be detained inasmuch as  
13:40:58 5 no conditions of release have been presented which would  
13:41:00 6 reasonably assure the safety of the community and the  
13:41:04 7 defendant's appearance at future court proceedings.  
13:41:08 8 The Court would note, as Mr. Kerger pointed out, that  
13:41:10 9 the defendant has a statutory right to reopen the  
13:41:14 10 detention issue. So when you have conditions of  
13:41:18 11 release that have been presented to Pretrial Services  
13:41:20 12 and investigated by them, the Court will hold another  
13:41:24 13 hearing on the issue of pretrial release or detention.

13:41:28 14 Is there anything further, Mr. Kerger or Mr.  
13:41:30 15 Hartman?

13:41:30 16 MR. HARTMAN: Actually there is, Judge. At  
13:41:32 17 this time we wanted to make the Court aware we do have a  
13:41:34 18 couple problems. As you're aware, our client is being  
13:41:38 19 detained up at FCI Milan. We understand it is not  
13:41:42 20 within the purview of the United States Attorney's  
13:41:46 21 Office. We do have a problem in that he's not been able  
13:41:48 22 to call us. He's not been able to keep materials that  
13:41:52 23 we have given him. And we've been informed by the  
13:41:56 24 institution there that we are only able to see him for a  
13:41:58 25 period of three hours per week, every Thursday from

13:42:02 1 12:30 to 3:30. We would like to enter an objection on  
13:42:08 2 the record to the Court for that.

13:42:10 3 Additionally, we would ask that if the Court  
13:42:14 4 would be willing to enter an order that the phones in  
13:42:18 5 our offices not be tapped or otherwise monitored during  
13:42:22 6 the pendency of the case, particularly without the  
13:42:26 7 supervision of a properly issued warrant.

13:42:30 8 THE COURT: Mr. Getz, would you like to  
13:42:32 9 respond?

13:42:32 10 Thank you, Mr. Hartman.

13:42:32 11 MR. GETZ: Your Honor, I assume that the  
13:42:34 12 request relative to the monitoring of calls, the tapping  
13:42:40 13 of phones is in reference to calls to or from the  
13:42:42 14 prison, essentially the inmates' calls that are being  
13:42:46 15 monitored. My understanding is that is the Bureau of  
13:42:50 16 Prison's policy nationwide. The United States  
13:42:52 17 Attorney's Office does not have any ability to do  
13:42:56 18 anything in regards to that policy. We have not  
13:42:58 19 requested it, and we don't control that.

13:43:02 20 These are perhaps matters that could be  
13:43:08 21 brought up with the Court at the status conference.

13:43:12 22 THE COURT: All right. Thank you. The  
13:43:14 23 Court was aware, Mr. Hartman, of your concerns before  
13:43:18 24 the hearing today. I've addressed them with the U.S.  
13:43:20 25 Marshal Service, and they are looking into your



13:43:24 1 allegations, and hopefully by the time you have your  
13:43:28 2 status conference with Judge Carr, the Marshal Service  
13:43:30 3 will have some answers to your questions, and perhaps  
13:43:34 4 before we leave the building today Mr. Harlow might be  
13:43:38 5 able to address some of those issues.

13:43:40 6 MR. HARTMAN: Thank you, Judge.

13:43:42 7 THE COURT: That will complete this hearing  
13:43:42 8 if there's nothing further. Is there anything further  
13:43:46 9 from the government?

13:43:46 10 MR. GETZ: Your Honor, only I understand  
13:43:48 11 there is a status conference scheduled.

13:43:50 12 THE COURT: There is a status conference  
13:43:52 13 scheduled with Chief Judge Carr on Tuesday, March 7 at  
13:43:56 14 noon. It will be a telephone status conference; you  
13:44:00 15 can participate by telephone.

13:44:02 16 MR. GETZ: Thank you. I have nothing  
13:44:04 17 further from the government.

13:44:04 18 THE COURT: Anything further from defendant?

13:44:06 19 MR. HARTMAN: No. Thank you.

13:44:08 20 THE COURT: That will complete this hearing.

13:47:04 21 (Concluded at 1:47 p.m.)

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**C E R T I F I C A T E**

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled  
matter.

/s Tracy L. Spore\_\_\_\_\_

Tracy L. Spore, RMR, CRR

\_\_\_\_\_ Date

13:47:06

13:47:06